

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FERNDALE IP, INC. and  
FERNDALE LABORATORIES, INC.

Plaintiffs,

v.

Case No. 04-72907

Hon. Victoria Roberts

DERMTEK PHARMACEUTICALS, LTD,  
CANAM HEALTH SOURCE INC.,  
RX1.BIZ PHARMACY, INC.,  
MCGREGOR CLINIC DRUGS,  
and TUCOWS, INC.

Defendants.

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**BUTZEL LONG**  
PHILIP J. KESSLER (P15921)  
J. MICHAEL HUGET (P39150)  
LAURIE J. MICHELSON (P47214)  
350 S. Main, Ste. 300  
Ann Arbor, MI 48104  
(734) 995-3110  
Attorneys for Plaintiffs

**ROTHWELL, FIGG, ERNST & MANBECK**  
G. FRANKLIN ROTHWELL  
ANNE M. STERBA  
1425 K Street, N.W. Suite 800  
Washington, D.C. 20005  
(202) 783-6040

**DICKINSON WRIGHT**  
K. SCOTT HAMILTON (P44095)  
500 Woodward Avenue, Suite 4000  
Detroit, MI 48226-3425  
Attorneys for Defendant  
Dermtek Pharmaceuticals Ltd.

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**CONSENT JUDGMENT**

This matter having come before the Court on the Complaint filed by Plaintiffs  
Ferndale IP, Inc. (“**Ferndale IP**”) and Ferndale Laboratories, Inc. (“**Ferndale Labs**” and  
together with Ferndale IP, “**Plaintiffs**”) and for violations of the Lanham Act, 15 U.S.C. §§  
1051 *et seq.*, as well as the common law of the State of Michigan against Defendant Dermtek  
Pharmaceuticals (“**Dermtek**”), the Court finds as follows:

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 1338 and 1367. The Court has personal jurisdiction over the parties to this action, and venue is appropriate in this District. The Court has jurisdiction over the parties and over the subject matter at issue.

2. Ferndale IP is the owner of the federally-registered trademark ANALPRAM HC (Reg. No. 1,476,501), which has been used in interstate commerce since May 1985 to identify a topical Hydrocortisone and Pramoxine cream for the treatment of hemorrhoids, and has become incontestable pursuant to 15 U.S.C. § 1065.

3. Dermtek is the owner of Canadian Trademark Registration No. TMA363755 for PRAMOX, which is also a topical Hydrocortisone and Pramoxine cream.

4. ANALPRAM HC and PRAMOX are separate and distinct products, manufactured by separate and distinct companies.

5. Ferndale alleged in its Complaint that Dermtek promoted its PRAMOX product for sale, or allowed it to be promoted, using the ANALPRAM HC mark, without authorization from Plaintiffs. Ferndale alleged that this constituted trademark infringement in violation of 15 U.S.C. §§1114 and 1125(a). Dermtek has denied these allegations in its Answer.

6. Pursuant to the Declaration of Dermtek's President, Dermtek represents that it has never used and agrees not to ever use the ANALPRAM HC mark in connection with Dermtek's products, including PRAMOX, and further represents that it has not and agrees that it will not in the future encourage, request, suggest and/or

require any third-party to refer to any Dermtek product as ANALPRAM or ANALPRAM HC or the equivalent of ANALPRAM or ANALPRAM HC.

7. Accordingly, upon entry of this Consent Judgment, Dermtek and its agents, servants, employees, directors and officers, over whom Dermtek has control, hereby agree not to use the ANALPRAM HC trademark other than in connection with goods or services sold by (i) Plaintiffs; or (ii) persons with respect to whom Dermtek has received a certification from Plaintiffs that such persons are Plaintiffs' authorized licensees.

8. Upon entry of this Consent Judgment, Plaintiffs agree to dismiss the instant action against Dermtek with prejudice.

9. In view of the foregoing, no accounting is ordered and no damages are awarded to Plaintiffs. In addition, each party hereto shall bear its own costs and attorney fees and no costs or attorney fees are awarded to any party.

10. If Ferndale, its agents, servants, employees, attorneys, directors and/or officers intends to distribute or disseminate any portion of this Consent Judgment to any third-party, Ferndale, its agents, servants, employees, attorneys, directors and/or officers agree to distribute or disseminate the entirety of the Consent Judgment to those third-parties.

This Court retains jurisdiction over this matter for purposes of enforcing this Consent Judgment.

Dated: December 9, 2005

S/Victoria A. Roberts  
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

BUTZEL LONG

By: s/Laurie J. Michelson (P47214)  
PHILIP J. KESSLER (P15921)  
J. MICHAEL HUGET (P39150)  
LAURIE J. MICHELSON (P47214)  
Attorneys for Plaintiffs,  
350 S. Main, Ste. 300  
Ann Arbor, MI 48104  
(734) 995-3110

DICKINSON WRIGHT P.L.L.C.

By: s/K. Scott Hamilton (P44095)  
500 Woodward Avenue  
Detroit, MI 48226-3425  
(313) 223-3500  
Attorneys for Defendant

ROTHWELL FIGG ERNST & MANBECK,  
PC  
G. FRANKLIN ROTHWELL  
ANNE M. STERBA  
Attorneys for Defendant Dermtek  
Pharmaceuticals  
1425 K Street, NW  
Washington, D.C. 20005  
(202) 783-6040